

The Administrative Law Judge (ALJ) found claimant was not a credible witness and denied his request for workers compensation benefits. The ALJ concluded that claimant failed to prove he suffered a personal injury while employed by respondent. The ALJ found claimant's pain complaints were related to a preexisting medical condition and were not the result of operating high loaders for the respondent causing a new injury to his thoracic spine.

But claimant contends the jolting, jarring, and vibration of operating high loaders for the respondent through November 7, 1996, coupled with a specific traumatic high loader incident that occurred on November 7, 1996, injured his thoracic spine resulting in surgery and permanent total disability. Claimant requests the Board to reverse the ALJ and award him permanent total disability benefits.

Conversely, respondent requests the Board to affirm the ALJ's Award. Respondent's principal argument is that claimant failed to prove he was involved in a specific accident on November 7, 1996, while operating a high loader for respondent. Furthermore, respondent contends the most persuasive medical opinion contained in the record is that of orthopedic surgeon David K. Ebelke, M.D., who was employed by respondent's insurance carrier to examine claimant. Dr. Ebelke opined that claimant's thoracic spine condition was not caused by a single trauma nor was it caused by repetitive trauma from operating high loaders for respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

After reviewing the record and considering the parties' oral arguments, the Board makes the following findings and conclusions:

1. Claimant contends he suffered injury to his thoracic spine as a result of repetitive trauma from the operation of high loaders for respondent culminating in a specific incident that occurred on November 7, 1996.¹

2. Claimant has a history of low back problems. In 1974, claimant injured his low back while employed by the respondent resulting in a L5-S1 fusion performed by orthopedic surgeon Dr. John Wertzberger of Lawrence, Kansas. Then in 1990 claimant fell into a rock crusher while working for the respondent and again injured his low back. No back surgery was needed but permanent work restrictions were placed on claimant that included prohibiting claimant from operating heavy equipment.

3. After claimant returned to work from the 1990 accident, respondent placed claimant on a light duty job of running a rock crusher where he could alternate standing and sitting. But respondent only had claimant perform the light rock crusher job for approximately six months and then placed claimant on jobs requiring him to operate high loaders.

4. Respondent promoted claimant to a working foreman position sometime in 1995. But claimant was still required to regularly operate a high loader on certain jobs. A high

¹ See Application for Hearing filed May 1, 1997, and Regular Hearing, August 3, 2000, p.4.

loader is a machine with a front bucket for loading rock or dirt that does not have shock absorbers and provides a rough and jarring ride for the operator.

5. Claimant complained to his supervisors of the increasing pain and discomfort he was experiencing as a result of operating the rough riding high loaders. Respondent, however, continued to require claimant to operate the high loaders. Respondent's management employees dispute that claimant was forced to operate the high loaders and also dispute that claimant made any complaints of back pain while he was working for respondent.

6. Respondent demoted claimant from his foreman's position on October 18, 1996, claiming unsatisfactory performance as a foreman. After the demotion, claimant was transferred to the Grantville quarry to operate the scale house for weighing trucks and operate a high loader to load trucks with rock.

7. Claimant remained in the Grantville quarry job until November 7, 1996, when he backed into a hole while operating the high loader which resulted in claimant receiving a jolt that caused immediate increased pain and discomfort in his middle to upper back area. On the day of the November 7, 1996, incident, claimant told his supervisor, Pat Blosser, and respondent's human resource manager, Brad Hern, that he had hurt his back when he backed into a hole. But Pat Blosser "...just don't recall..." whether claimant told him about injuring his back while operating a high loader on November 7, 1996.²

8. Brad Hern, however, acknowledged that claimant reported to him on November 7, 1996, that "he had an ongoing injury with his back and he had an exacerbation of a previous injury and that he was not going to run equipment anymore."³ Claimant reported his back problems to Mr. Hern the day after respondent notified claimant that his internal company appeal requesting reinstatement to his foreman job was denied.

9. After claimant reported his back problem to Mr. Hern, claimant was referred by respondent to Midwest Occupational Health for examination and treatment. Claimant was seen on November 8, 1996, by Mr. David L. Couch, a nurse practitioner. Claimant provided Mr. Couch with a history of ongoing back pain and a recent exacerbation of his back injury while working for respondent. Claimant attributed his back pain to the constant vibration of operating high loaders over the last few months. Claimant's pain complaints focused on his upper back and to a lesser extent on his lower back. Mr. Couch then referred claimant to orthopedic surgeon Michael Smith, M.D..

10. Dr. Smith saw claimant on November 26, 1996. Claimant provided Dr. Smith with a history of low back problems. But his current complaints were pain between the

² Deposition of Pat Blosser, August 31, 2000, p.10.

³ Deposition of Brad Hern, August 31, 2000, p.7.

shoulder blades radiating down into his low back and occasionally into his lower extremities. Dr. Smith's November 26, 1996, medical record did not note any recommendations for treatment.

11. Claimant returned to Midwest Occupational Health and was seen on December 4, 1996, by Dr. Doug Frye. Dr. Frye released claimant to return to work with restrictions of limiting lifting to 20 pounds, no repetitive lifting, bending and not to operate heavy equipment.

12. After claimant notified respondent on November 7, 1996, of his worsening upper back problem, claimant took a one week vacation. Claimant remained in bed almost the entire week because of his severe back pain. After claimant's week of vacation, respondent attempted to return claimant to operating a high loader. Claimant refused the high loader job because of his continuing pain and discomfort in his upper back.

13. On December 9, 1996, respondent returned claimant to the job of operating a rock crusher. But claimant left this job after only two and one half hours because of increased pain. One of the duties required to operate the rock crusher was to perform climbing activities which claimant was unable to perform.

14. Respondent terminated claimant from its employment after claimant refused to attempt an offered rock drilling operator job in February 1997. Claimant had previously performed the drilling job and knew he could not do the job because of the pain and discomfort he was experiencing.

15. Medical records submitted for review by claimant's treating physician, orthopedic surgeon Glenn M. Amundson, M.D., and orthopedic surgeon David K. Ebelke, M.D., indicate that claimant sought medical treatment with Drs. Wertzberger, Bailey and Wendt's office in February and March of 1996, complaining of pain in the interscapular area radiating into both legs, loss of control of legs and almost falling a number of times.

16. After claimant was terminated, he went on his own for medical treatment and pain management to his personal physician James H. McMechan, D.O. and Drs. Wendt and Bailey. Dr. Bailey saw claimant on January 9, 1997, for ongoing back problems and noted an exacerbation in October of 1996. Dr. Wendt's medical note of June 11, 1997, documented chronic mid to low thoracic pain as well as upper lumbar pain.

17. Claimant filed an Application for Hearing before the Division of Workers Compensation on January 31, 1997. Margaret Wright, claims specialist for respondent's insurance carrier, was responsible for claimant's workers compensation claim in 1997. On April 17, 1997, Ms. Wright, with claimant's permission, obtained a recorded statement from claimant concerning his workers compensation claim. The tape containing the recorded statement and the transcript of the recorded statement were admitted into evidence at Ms. Wright's August 31, 2000, deposition.

In regard to claimant's accident date, claimant was asked and answered the following questions:

Q: ...OK, this happened originally on November 7, is that correct?

A: Well madam, it didn't happen as a one . . .

Q: It was a repetitive?

A: Well no was actually after I went through ah, all this stuff and I am talking about the treatment and going to the doctors and all this, ah, what has happened is that I thought at first it was an aggravation of an old injury.

Q: Uh huh.

A: It is not. Ah.

Q: ...Was this originally filed for like November 7, as a result of working at Hamm?

A: Yeah, that'd be pretty good, that's a close approximation of the date, yes ma'am.⁴

Q: OK, you were a foreman on November 7 of '96?

A: Yes.

Q: OK, and what's when you had this accident, was this an accident or just it had been?

A: Well Marilyn, it wasn't a particular accident.

Q: OK.

A: Ah, what actually happened was I wasn't supposed to be running loaders.⁵

⁴ Deposition of Mary Wright, August 31, 2000, Exhibit No. 2, April 17, 1997, trans. of recorded statement, p.2.

⁵ Deposition of Mary Wright, August 31, 2000, Exhibit No. 2, April 17, 1997, trans. of recorded statement, p.8.

18. On September 4, 1997, the ALJ appointed Dr. Glenn M. Amundson, who specializes in adult spine disorders, of the Kansas University Physicians, Inc. to perform an independent medical examination of claimant for the purpose to provide opinions on medical causation and treatment recommendations.

19. Dr. Amundson first examined claimant on October 7, 1997, and found claimant with thoracic back pain and spasms. Claimant advised Dr. Amundson that his thoracic back pain was so severe it was intolerable. Dr. Amundson noted claimant had received treatment for his thoracic back pain by numerous physicians and had undergone numerous modalities of treatment, consisting of non-steroid anti-inflammatories, muscle relaxants, narcotic analgesics, physical therapy and a TENS unit. Dr. Amundson found claimant walked with the assistance of a cane and stated average pain levels from 8 to 10 and commonly exacerbated to over 10 on a scale of 10.

20. Dr. Amundson had available for review claimant's past medical treatment records from as far back as the early 1970s. Dr. Amundson noted claimant had a thoracic MRI scan on March 1, 1996, which indicated that claimant had thoracic pain complaints from running heavy equipment while employed by the respondent clearly before the November 7, 1996, incident at work. Because claimant's previous diagnostic studies of his thoracic spine were negative, Dr. Amundson had claimant undergo another thoracic MRI scan and a SPECT scan in an effort to find the cause of claimant's chronic debilitating and incapacitating thoracic spine pain.⁶

21. Claimant was seen by Dr. Amundson on February 12, 1998, after the MRI and the SPECT scans were completed and available. The MRI scan showed two levels of clear disc degeneration at T7-8 and T8-9. Claimant also had a small, right paracentral disc herniation at the T8-9 level which did not appear to cause significant spinal cord impingement or nerve root impingement. Dr. Amundson, based on those findings, felt that the abnormalities correlated beautifully with the patient's pain pattern of predominant thoracic back pain.⁷

22. Dr. Amundson, after reviewing claimant's history, his physical examination and the diagnostic studies, found the T7-8 and T8-9 vertebra levels as the source of claimant's discomfort and recommended surgery. Claimant choose a single stage posterior instrumented fusion from T7 to T9 with a left posterior iliac crest bone graft. Claimant underwent successful and uncomplicated surgery on July 6, 1998.

⁶ Deposition of Glenn M. Amundson, M.D., July 27, 2000, Exhibit No. 2, January 13, 1998, medical record.

⁷ Deposition of Glenn M. Amundson, M.D., July 27, 2000, Exhibit No. 2, October 5, 1999, Independent Medical Evaluation and Rating.

23. Post-surgery claimant progressed reasonably well until Dr. Amundson saw claimant on November 3, 1998. At that time, claimant had discontinued physical therapy because of an aggravation of his thoracic spine condition. Claimant complained of significant mid-thoracic back pain with associated spasm and aggravation.

24. Claimant's condition deteriorated to a point where his pain was again intolerable. On February 5, 1999, claimant underwent surgery to remove the instrumentation and claimant's fusion mass was augmented. Claimant had some improvement after this surgery but still had complaints of constant pain. Dr. Amundson referred claimant to the Pain Clinic for pain management.

25. The last time Dr. Amundson saw claimant was on October 5, 1999, for a final independent medical evaluation and rating. Dr. Amundson concluded that claimant had sustained a new injury to his thoracic spine as a result of a cumulative injury and an acute injury that occurred on November 7, 1996, while employed by respondent. Dr. Amundson opined that claimant's previous low back problems and surgery had no relationship to claimant's thoracic spine injury.

26. Dr. Amundson found claimant with complaints of electric shock like sensations from the mid-thoracic spine. Claimant gave a history that he spent 80 percent of his awake time hours flat on his back in bed. Claimant complained of both legs aching down to the middle of the bone without any specific radicular distribution. Claimant takes morphine orally at regular intervals during the day for his severe pain and discomfort. A recent CT scan showed evidence of a successful fusion. But claimant continued to suffer from chronic thoracic pain syndrome. At the time of the examination, Dr. Amundson found no specific radicular symptoms, although radicular symptoms had been clearly demonstrated in the past.

27. Dr. Amundson found claimant had met maximum medical improvement and a review of the Pain Center's medical records indicated that claimant was potentially a spinal stimulator candidate in the future. Dr. Amundson found claimant was functioning at less than the sedentary physical demand level. Claimant required a total of 6 to 8 hours of recumbency during his waking hours. The doctor recommended for claimant to avoid repetitive bending, pushing, pulling, twisting or lifting activities. Claimant also was found to have very limited sitting, standing and walking abilities. Dr. Amundson answered, "No" to the question of whether claimant was capable of substantial and gainful employment. He went on to answer, "truthfully, yes." to the question, "he is a basket case, is he not?" Dr. Amundson added, "he is about as bad as (sic) it gets."⁸

28. Utilizing the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, Table 70 on page 108, Dr. Amundson opined that claimant's thoracic spine injury

⁸ Deposition of Glenn M. Amundson, M.D., July 27, 2000, p.12.

best fit a DRE Cervicothoracic Category III, for a 15 percent whole person functional impairment.

29. Orthopedic surgeon Dr. David K. Ebelke, M.D., whose medical practice is limited to spinal disorders, at the request of respondent's insurance carrier, performed an independent medical examination of claimant on February 21, 2000. Dr. Ebelke saw claimant on just one occasion. Before the examination, Dr. Ebelke was provided with claimant's previous medical treatment records and he reviewed those records before he examined claimant.

30. Dr. Ebelke found claimant with chronic pain complaints in the back, upper and lower extremities. Dr. Ebelke opined that claimant's thoracic spine problems had no relationship to either the repetitive vibrations he experienced while operating high loaders for the respondent or the specific incident claimant described as backing into a hole on November 7, 1996, while operating the high loader. Dr. Ebelke further opined in the case of spinal injuries there is no defined or accepted so-called repetitive use syndrome. The fact claimant experienced pain due to the vibration of operating high loaders does not mean claimant permanently aggravated a preexisting spinal condition. Although claimant experienced increased pain, Dr. Ebelke thought he just temporarily aggravated a preexisting condition and did not permanently aggravate the condition. The doctor attributes the reason for claimant's increased pain while working for respondent to not being physically fit for the type of work he was performing because of his prior history of back problems.

31. Dr. Ebelke opined that Dr. Amundson was an excellent surgeon. But Dr. Ebelke also thought that Dr. Amundson based his opinion that claimant's operation of high loaders for respondent permanently aggravated his preexisting thoracic spine condition only on claimant's increased symptoms. Dr. Ebelke concluded an increase in claimant's symptoms would not be a good enough reason for him to form an opinion of a permanent aggravation. He went on to opine that he did not think the two operations that Dr. Amundson performed on claimant's thoracic spine were necessary. If he would have seen the claimant pre-operatively, he would have strongly advised against surgery. Moreover, Dr. Ebelke's opinion was that claimant made himself a victim over a number of years and he obviously had anger and animosity toward his previous employer. This type of employer-directed anger and job dissatisfaction often elicits pain complaints of a nature that sometimes lead to unnecessary and unsuccessful operations.

32. Dr. Ebelke agrees with Dr. Amundson's 15 percent whole body functional impairment rating, but attributes all of the rating to claimant's preexisting condition rather than any new injury. From a physical standpoint, Dr. Ebelke found claimant capable of working in the medium level work category, but from a psychological standpoint claimant was probably unemployable.

33. At the August 3, 2000, regular hearing, claimant was continuing pain management treatment at the Kansas University Medical Center Pain Clinic. In an effort to better manage claimant's severe pain problem, the Pain Clinic had installed an internal morphine pump in claimant's lower abdomen. The pump automatically administered morphine on a scheduled basis from the pump through a catheter to claimant's spine. Additionally, claimant was required at different times to supplement the morphine pump medication with morphine taken orally.

34. Since April 1999, claimant has been receiving social security disability benefits of \$930 per month minus \$23 per month for medicare insurance payment.

35. Claimant continues to have pain in his upper back below his shoulders which radiates down into his right leg and less severely down into his left leg. The pain claimant presently experiences is not the same pain as he experienced either after his 1974 or 1990 low back injury.

36. Vocational expert, Michael J. Dreiling, was employed by respondent's attorney to interview claimant and perform a vocational assessment to evaluate claimant's capacity to perform work in the labor market and earn wages.

Mr. Dreiling interviewed claimant on August 10, 2000. Based on Dr. Amundson's medical opinion and restrictions, Mr. Dreiling found claimant was not capable of performing at even a sedentary level of activity. Thus, Mr. Dreiling concluded claimant was not capable of performing any substantial and gainful employment.

But if he accepted Dr. Ebelke's opinion that claimant retained the ability to function at a medium level of work, Mr. Dreiling believed there were jobs in the Topeka, Kansas labor market that claimant obtained the ability to perform paying an average hourly rate of \$7.22 per hour.

CONCLUSIONS OF LAW

1. In proceedings under the Workers Compensation Act, claimant has the burden to prove by a preponderance of the credible evidence his or her entitlement to an award of compensation and prove the various conditions in which the right depends.⁹

2. Here, the ALJ denied claimant workers compensation benefits for a thoracic spine injury and resulting surgery. The ALJ found claimant not a credible witness. The ALJ did believe the claimant's operation of high loaders while he was employed by the respondent caused him increased pain. But the ALJ also concluded that claimant's increased pain was the result of a preexisting medical condition and not a new injury.

⁹ See K.S.A. 1996 Supp. 44-501(a) and K.S.A. 1996 Supp. 44-508(g).

Accordingly, the ALJ denied the claim finding claimant failed to prove he suffered a personal injury as defined in K.S.A. 1996 Supp. 44-508(e).¹⁰

3. Many factors enter into making this a very difficult and close case for decision. First, claimant's credibility is questioned because respondent demoted claimant from a working foreman position and then claimant a day after he was notified he lost an internal company appeal reinstating him to the foreman's position he claimed a work-related injury. Second, claimant had suffered previous low back injuries and at least at first claimant also had some symptoms in his low back. Third, there is conflicting testimony in this case between claimant and respondent management representatives. Lastly, two board certified orthopedic surgeons both specializing in spine disorders, expressed divergent medical opinions concerning the diagnosis of claimant's thoracic spine condition, the cause of his thoracic spine condition, and the reason for claimant's current debilitating condition.

4. But the one thread that runs throughout this case is that claimant was consistent. The history he gave to medical treatment providers, beginning with Midwest Occupational Health, who saw claimant the day after he reported his work-related injury on November 8, 1996, always focused his pain and discomfort in his thoracic spine area and not his low back area where he had suffered previous injuries in 1974 and 1990.

The Board finds that claimant's operation of the high loaders while he was employed by the respondent caused a new injury in claimant's thoracic spine area rather than the lower back, which was the site of his preexisting injuries.

5. The ALJ and respondent both discredited claimant because of a recorded statement he made to respondent's insurance carrier's adjuster Ms. Wright on April 17, 1997. The Board has reviewed this recorded statement and does not find that the statement contradicts that claimant's contention that he backed into a hole on November 7, 1996, as he described for medical treatment providers and during his testimony at the regular hearing. Ms. Wright did not ask claimant a specific question about whether he backed into a hole on November 7, 1996. What Ms. Wright did ask was if the accident occurred on November 7, 1996. The Board interprets claimant's replies to those questions as indicating that his upper back injury was not just caused from one particular incident, but was the result of a series of accidents caused by the rough riding and jarring of the high loaders.

6. The ALJ also relies on the medical opinions of Dr. Ebelke in denying claimant benefits. As summarized above, Dr. Ebelke simply does not believe that a worker can suffer a spinal injury or even carpal tunnel syndrome as a result of repetitive trauma caused by performing regular work activities. Dr. Ebelke also believes, although he did admit that Dr. Amundson was an excellent surgeon, that Dr. Amundson should not have

¹⁰ "...any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives away under stress of the workers usual labor."

operated on claimant's thoracic spine. In fact, in a review of Dr. Ebelke's testimony and his February 21, 2000, medical report, one interpretation that can be made is claimant's thoracic spine complaints have a direct relationship to claimant's anger at his employer for requiring him to operate high loaders.

7. Claimant's testimony and the consistent histories he provided medical providers establish a causal connection between the jarring and vibrating that he experienced while operating high loaders for the respondent and his thoracic spine injury. Then the specific event that claimant describes of backing in a hole on November 7, 1996, was an event that further worsened or accelerated his already existent thoracic pain and discomfort. The Board concludes that the greater weight of the evidence and specifically the more persuasive medical opinions of claimant's treating physician, Dr. Amundson, prove that claimant's thoracic spine injury arose out of and in the course of his employment with respondent. Furthermore, his operation of high loaders for respondent up through November 6, 1996, and then cumulating in a specific traumatic event on November 7, 1996, caused continued aggravation and acceleration of claimant's thoracic spine condition.¹¹

8. Having found claimant's thoracic spine injury was the result of his regular employment duties while working for the respondent, the next question for decision is the nature and extent of claimant's disability. Claimant contends that because of his continuing pain and discomfort he is unable to work. In fact, since April 1998 claimant has been receiving \$930 per month minus \$23 in medicare insurance payment from Social Security Disability.

K.S.A. 44-510c(a)(2) defines permanent total disability as follows:

Permanent total disability exists when the employee, on account of the injury, has been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment.

The terms "substantial and gainful employment," are not defined in the Kansas Workers Compensation Act. The Kansas Court of Appeals, however, has held that an injured worker is permanently and totally disabled because he is essentially and realistically unemployable and this definition is compatible with the legislative intent.¹²

9. The Board finds Dr. Amundson's opinions in regard to claimant's permanent whole body functional impairment and work restrictions are persuasive and adopts his opinions. First, Dr. Amundson assessed claimant with a 15 percent whole body functional

¹¹ See Claphan v. Great Bend Manor, 5 Kan. App. 2d 47, 611 P.2d 180, rev. denied 228 Kan. 806 (1980).

¹² See Wardlow v. ANR Freight Systems, 19 Kan. App. 2d 110, 113, 872 P.2d 299 (1993).

impairment as a result of his thoracic spine injury in accordance with the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition, Table 70, p. 108, DRE Cerviothoracic Category III. Second, Dr. Amundson opined that claimant is functioning at less than sedentary physical demand level. Dr. Amundson found claimant had very limited sitting, standing, and walking ability. In addition, the limitation that was the most restrictive to claimant's employability was that claimant requires periods of recumbency totaling 6-8 hours during his waking hours.

Utilizing Dr. Amundson's restrictions and opinions concerning claimant's physical limitations resulting from this injury, vocational expert Michael Dreiling opined claimant was precluded from performing any type of substantial and gainful employment in the open labor market.

10. After considering the claimant's restrictions and the serious physical limitations claimant has as a result of his work-related injury, claimant is incapable of returning to substantial and gainful employment and the Board finds that claimant is essentially and realistically unemployable. Therefore, the Board concludes, pursuant to K.S.A. 44-510c(a), that claimant is permanently and totally disabled.

11. At the regular hearing, claimant proved he was in need of continuing pain management and he was being treated for the pain at the Kansas University Medical Center Pain Clinic. At that time, claimant had been provided with a morphine pump for his continuing pain management. Claimant also testified that at given times he needed to take additional morphine orally. The Board finds that respondent should pay all reasonable and necessary medical expenses as recommended by the Pain Clinic which would include all prescribed pain medication including the medication required for the morphine pump and any maintenance or replacement needed for the morphine pump. Because of the length of time that has elapsed since the record was closed in this case, all other future medical treatment should be provided only upon proper application and approval by the Director.

AWARD

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Bryce D. Benedict's October 2, 2000, Award should be, and is hereby reversed and an Award is entered as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Edward Roberson and against the respondent, N.R. Hamm Quarry, Inc., and its insurance carrier, CNA Insurance Company, for an accidental injury which occurred November 7, 1996, and based upon an average weekly wage of \$540.54.

Claimant is entitled to 69.43 weeks of temporary total disability compensation at the rate of \$338 per week or \$23,467.34 followed by 300 weeks of permanent total disability

compensation at the rate of \$338 per week or \$101,400.00 plus one additional week at \$132.66 for a permanent total disability award of \$125,000.

As of May 31, 2002, there would be due and owing to claimant 69.43 weeks of temporary total disability compensation at the rate of \$338 per week or \$23,467.34, followed by 220.71 weeks of permanent total disability compensation at the rate of \$338 per week or \$74,599.98 for a total due and owing of \$98,067.32, which is ordered paid in one lump sum less any amounts previously paid. Thereafter, claimant is entitled to 79 weeks of permanent total disability compensation at the rate of \$338 per week or \$26,702.00, plus one additional week at \$230.68 for a total of \$26,932.68 until fully paid or until further order of the Director.

Claimant is entitled to unauthorized medical expenses up to the statutory maximum upon presentation of an itemized statement verifying same.

Respondent is ordered to pay all reasonable and necessary medical expenses as authorized medical.

The Board adopts the order contained in the Award assessing the court reporter fees and costs against the respondent.

IT IS SO ORDERED.

Dated this ____ day of May 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Edward Roberson, Pro Se
George Pearson, Former Attorney for Claimant
Wade Dorothy, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge

EDWARD ROBERSON

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DOCKET NO. 220,107

Philip S. Harness, Workers Compensation Director